

SUMMARY ANALYSIS OF AMENDED BILL

Author: Migden Analyst: Gail Hall Bill Number: SB 1827
 Related Bills: See Prior Analysis Telephone: 845-6111 Amended Date: May 2, 2006
 Attorney: Patrick Kusiak Sponsor: _____

SUBJECT: Filing Status/Domestic Partners

- DEPARTMENT AMENDMENTS ACCEPTED. Amendments reflect suggestions of previous analysis of bill as amended April 17, 2006 .
- AMENDMENTS IMPACT REVENUE. A new revenue estimate is provided.
- AMENDMENTS DID NOT RESOLVE THE DEPARTMENTS CONCERNS stated in the previous analysis of bill as introduced/amended _____.
- FURTHER AMENDMENTS NECESSARY.
- DEPARTMENT POSITION CHANGED TO _____.
- REMAINDER OF PREVIOUS ANALYSIS OF BILL AS AMENDED April 17, 2006 , STILL APPLIES.
- OTHER – See comments below.

SUMMARY

This bill would require registered domestic partners to file personal income tax returns as either: (1) married filing joint, or (2) married filing separate.

SUMMARY OF AMENDMENTS

The May 2, 2006, amendments resolved the technical considerations discussed in the analysis of the bill as amended April 17, 2006. In addition, the amendments removed a sentence in the Family Code relating to community property.

Except for the discussion in this analysis, the remainder of the department’s analysis of the bill as amended April 17, 2006, still applies.

POSITION

Pending.

Board Position:	Legislative Director	Date
<input type="checkbox"/> S	Brian Putler	5/12/06
<input type="checkbox"/> SA		
<input type="checkbox"/> N		
<input checked="" type="checkbox"/> PENDING		
<input type="checkbox"/> NA		
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ANALYSIS

FEDERAL/STATE LAW

The following supplements the FEDERAL/STATE LAW discussion in the analysis of the bill as amended April 17, 2006.

An Internal Revenue Service (IRS) Chief Counsel Advice (CCA)¹ dated February 24, 2006, concluded community property rules are not applicable to registered domestic partners for federal tax purposes. This memo addressed the provisions of the California Family Code under current law and not the provisions of this bill. In addition, the CCA provides that it may not be used or cited as precedent.

The IRS CCA cites *Poe v. Seaborn* (1930) 282 U.S. 1010 that held that a state's community property laws determine how a husband and wife split income for federal tax purposes. The IRS memo concludes that the *Poe v. Seaborn* decision applied to a husband and wife, and not to domestic partners.

Current state law provides that registered domestic partners shall have the same rights, protections, and benefits and shall be subject to the same responsibilities, obligations, and duties as imposed upon a spouse.² In addition, the law specifically provides that registered domestic partners may only use the filing status used on his or her federal tax return, single or head of household. Current state law also states that earned income will not be treated as community property for state income tax purposes, apparently meaning such income would not be split between domestic partners.³

THIS BILL

Under state income tax law, this bill would require registered domestic partners to file a personal income tax return jointly or separately by applying the standards applicable to married couples under federal income tax law. In addition, this bill would provide a rule to determine the application of limits based on adjusted gross income for domestic partners by combining the amounts reflected as adjusted gross income on the federal income tax return of each domestic partner. This bill would revise existing provisions of law to treat registered domestic partners as married persons for purposes of filing status as follows:

- Domestic partners may file separate returns for any taxable year where a joint return has already been filed after the original filing period to file a return has expired.
- No joint return can be made if the domestic partners have different taxable years, subject to exception.

¹ Chief Counsel Advice 200608038 February 24, 2006.

² Family Code Section 297.5(a).

³ Family Code Section 297.5(g).

- Extend to registered domestic partners the same rules with respect to filing status that are applicable in the event of the death of one or both spouses.

This bill would apply the California community property rules to registered domestic partners in the same manner as married couples.

ECONOMIC IMPACT

Based on data and assumptions discussed below, the PIT and Corporation Tax revenue loss from this bill would be as follows:

Estimated Revenue Impact of SB 1827 Effective On Or After January 1, 2007 Enactment Assumed After June 30, 2006 (\$ Millions)			
	2007-08	2008-09	2009-10
Filing Status	-\$8	-\$9	-\$10
Community Property	a/	a/	a/

a/ Insignificant gains of less than \$150,000.

This estimate does not consider the possible changes in employment, personal income, or gross state product that could result from this measure.

The following supplements the ECONOMIC IMPACT discussion in the analysis of the bill as amended April 17, 2006.

Revenue Discussion

The current amendment makes a number of technical corrections that do not impact revenue.

In addition, the amendments remove a provision of family law that provides that earned income shall not be considered community property for state income tax purposes so that all of California's community property laws will apply to registered domestic partners for state tax purposes. Insignificant revenue effects are estimated from this amendment.

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